

2020ajbarrcf

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 JOSE BARRAGAN CONTRERAS, et  
5 al.,

6 Plaintiffs,

7 v.

17 CV 6453 (CS)

8 SETTLEMENT

9 ROSANN LANDSCAPE CORP., et  
10 al.,

11 Defendants.  
12 -----x

13 United States Courthouse  
14 White Plains, New York  
15 October 19, 2020

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18 Before: THE HONORABLE JUDITH C. MCCARTHY, Magistrate Judge  
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\*Proceeding recorded via digital recording device.

APPEARANCES

DAVID TYKULSKER & ASSOCIATES  
Attorneys for Plaintiffs  
DAVID ABE TYKULSKER

WORKER JUSTICE CENTER OF NEW YORK, INC.  
Attorneys for Plaintiffs  
ROBERT DAVID McCREANOR  
MAUREEN HUSSAIN

BERNBACH LAW FIRM  
Attorneys for Defendants  
JEFFREY M. BERNBACH

KOMMER, BAVE & OLLMAN  
Attorneys for non-party Auricchio Trust  
RACHEL CICCONE

Also present: DOMINIC CAPIO, Trustee

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1 THE DEPUTY CLERK: Barragan Contreras v. Rosann  
2 Landscape Corp.

3 Counsel, please state your appearances for the  
4 record.

5 MR. MCCREANOR: For the plaintiffs, Worker Justice  
6 Center of New York, by Robert McCreanor.

7 MS. HUSSAIN: Also for the plaintiffs, Worker Justice  
8 Center of New York, Maureen Hussain.

9 MR. TYKULSKER: Also for the plaintiffs, David  
10 Tykulsker, David Tykulsker & Associates.

11 MR. BERNBACH: For the defendants, Bernbach Law Firm,  
12 PLLC, by Jeffrey Bernbach.

13 MS. CICCONE: For the Auricchio Trust, a non-party,  
14 Rachel Ciccone, Kommer, Bave & Ollman.

15 THE COURT: Also present is Ann Maria Birlescu, a  
16 defendant, and Dominic Capio, Trustee.

17 In this matter we have been having a settlement  
18 conference, the fourth that we've had over the course of the  
19 past year and half, and I'm pleased to say that the case has  
20 settled.

21 I'm going to ask counsel for plaintiff to please put  
22 the terms of the settlement on the record and then I will allow  
23 the Trust and the defendant to add anything that they think  
24 needs to be added.

25 Counsel.

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1 MR. TYKULSKER: Thank you, your Honor. It's David  
2 Tykulsker.

3 The matter has been settled for a total sum of \$1  
4 million payable \$500,000 by the defendants and \$500,000 by the  
5 Trust.

6 The Trust has agreed, for purposes of this matter and  
7 all related matters, to be subject to the Court's jurisdiction  
8 and that there will be joint and several liability for the  
9 total sum. The Trust will guarantee the payment of the  
10 settlement amount. The Trust and the parties agree that they  
11 will not contest any issues with the way plaintiffs seek to  
12 distribute these monies, service awards, the fees, the  
13 allocation of damages between the wages and nonwage damages,  
14 the notice efforts that plaintiff will make, the \$20,000  
15 plaintiffs intend to allocate to claims administration from the  
16 corpus. The fees and costs, which will approximate \$333,000,  
17 will be distributed to the attorneys. They agree that they  
18 will not object to any redistribution that the plaintiffs seek  
19 to make in order to make payment and any cy pres that would be  
20 needed if payment cannot be made. Under any set of  
21 circumstances, there will be no reversion of these monies to  
22 the defendants.

23 The plaintiffs will, within 48 hours, withdraw -- or  
24 communicate to Lefrak, withdraw the hold it currently exists  
25 with regard to the monies owing to the defendants. By the

close of Friday, business on Friday, the plaintiff will also communicate to all other parties, banks and the district courts in Florida, Southern District of Florida and Vermont, that the hold will be released on any property of the defendant. The plaintiffs will, in return for payment, give to defendants and the Trust and any agents thereof full release of any claims that were raised in this case or could have been raised. We will withdraw the appeal that is pending in the Second Circuit and we will provide a warrant to satisfy the 54(b) judgment that already exists.

As far as we can tell, that is the terms of this settlement. The Court is going to maintain jurisdiction to be sure that the terms are complied with.

MR. McCREANOR: This is Robert McCreanor.

I just want to specify one term here. Mr. Tykulsker said the plaintiff will determine the division of damages between wages and nonwages, and just to be clear, the employer shall remain responsible for employer share of payroll taxes that the workers will be responsible for for the taxes that are withheld on the wage portion and, obviously, any additional tax reporting obligations that they have.

THE COURT: Mr. Bernbach.

MR. BERNBACH: Nothing to add other than it's anticipated that, upon the Court's approval of the settlement, the parties will enter into a formal standard form of

1 settlement agreement in cases of this type.

2 THE COURT: Counsel, any objections to that?

3 MR. TYKULSKER: No. We anticipate doing precisely  
4 that. Obviously, the standard Rule 23 nature of the case, we  
5 will do that at the point of final approval, but, yes, we  
6 absolutely anticipate that.

7 MR. BERNBACH: Okay.

8 THE COURT: And Ms. Hussain, anything you want to  
9 add?

10 MS. HUSSAIN: No, your Honor.

11 THE COURT: Okay. Is there anything else we need to  
12 do today?

13 MR. TYKULSKER: No. Just to thank your Honor for  
14 your good work in getting this resolved.

15 THE COURT: Glad I was able to help.

16 I will let Judge Seibel know it settled; however, you  
17 probably should let her know, also.

18 MR. TYKULSKER: We will do so.

19 THE COURT: Okay.

20 MR. McCREANOR: Thank you, your Honor.

21 THE COURT: Good luck to everyone and stay well.

22 MS. HUSSAIN: Thank you, your Honor

23 MR. BERNBACH: Thank you, your Honor.

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